Meeting of States Parties

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Report of the twenty-first Meeting of States Parties

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I. Introduction

1. The twenty-first Meeting of States Parties to the United Nations Convention on the Law of the Sea[1] was held at United Nations Headquarters from 13 to 17 June 2011, in accordance with article 319, paragraph 2 (e), of the Convention and paragraph 36 of General Assembly resolution 65/37 A.

2. The Meeting was attended by the representatives of States parties to the Convention[2] and observers, including the International Seabed Authority, the Commission on the Limits of the Continental Shelf[3] and the International Tribunal for the Law of the Sea.[4,5]

II. Organization of work

A. Opening of the Meeting and election of officers

3. Arif Havas Oegroseno (Indonesia), President of the twentieth Meeting, opened the twenty-first Meeting.

4. The Meeting observed a minute of silence in memory of Mr. Kensaku Tamaki, member of the Commission on the Limits of the Continental Shelf.

5. The Meeting elected Camillo Gonsalves (Saint Vincent and the Grenadines) as President of the twenty-first Meeting of States Parties, by acclamation.

6. The Meeting elected Shanelina Zainul Abidin (Malaysia), Ledia Hysi (Albania), Yousouf M. Ramjanally (Mauritius) and Susan Robertson (Australia) as Vice-Presidents, by acclamation.

7. The President invited the Under-Secretary-General for Legal Affairs, Legal Counsel of the United Nations, to address the Meeting.

Statement by the Legal Counsel

8. The Legal Counsel, Patricia O'Brien, noted that the Convention provided the legal framework for all activities in the oceans and seas and expressed satisfaction at the increase in the number of States parties. In particular, she recalled that Malawi and Thailand had recently become parties to the Convention, bringing the total number of parties to 162. The Legal Counsel reiterated her appeal to find a viable solution to the issue of the workload of the Commission on the Limits of the Continental Shelf. In that connection, she pointed out that, should the Meeting adopt decisions that would have financial and staffing implications connected with the enhanced servicing of the Commission for a longer period of time, the Secretariat would need to address such implications.

[1] United Nations, *Treaty Series*, vol. 1833, No. 31363.

[2] See rule 5 of the Rules of Procedure for Meetings of States Parties (SPLOS/2/Rev.4).

[3] See rule 18 of the Rules of Procedure.

[4] See rule 37 of the Rules of Procedure.

[5] For a list of participants in the twenty-first Meeting of States Parties, see SPLOS/INF/25.

Statement by the President

9. The President welcomed the new States parties and stressed the goal of universal participation in the Convention. He observed that a strong and universally accepted international legal regime would benefit both the international community and individual States in terms of the maintenance of international peace and security and the sustainable use of ocean resources, navigation and protection of the marine environment.

B. Adoption of the agenda and organization of work

10. The President introduced the provisional agenda.[6] Some delegations recalled an understanding reached at the nineteenth Meeting of States Parties to defer to a future Meeting the consideration of the inclusion of an agenda item concerning the relationship between the common heritage of mankind and article 121 of the Convention. Even though no specific request had been made for its inclusion on the agenda of the twentieth or twenty-first Meeting,[7] they maintained that the item could be considered by the present or a future Meeting. The Meeting then adopted the agenda, without amendments (SPLOS/227).

11. Following consultations with the Bureau, the President made proposals regarding the organization of work. The Meeting approved the organization of work on the understanding that it could be adjusted, as necessary, in order to ensure the efficient conduct of the discussions.

III. Credentials Committee

A. Appointment of the Credentials Committee

12. On 14 June 2011, pursuant to rule 14 of its Rules of Procedure (SPLOS/2/Rev.4), the Meeting appointed a Credentials Committee consisting of the following nine States parties: Belgium, Brazil, Ghana, Norway, the Philippines, Saudi Arabia, Ukraine, Uruguay and Zambia. The Credentials Committee held two meetings, on 14 and 16 June 2011. At its 1st meeting, the Committee elected Robert Eric Alabado Borje (Philippines) as Chairperson.

B. Report of the Credentials Committee

13. The Chairperson of the Credentials Committee introduced the reports of the Committee (SPLOS/228 and Add.1) on 14 and 16 June 2011, respectively. He stated that the Committee, at its two meetings, had examined and accepted the credentials of representatives to the twenty-first Meeting from 151 States parties.

14. The Meeting then approved the two reports of the Credentials Committee.

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[6] SPLOS/L.67.

[7] See SPLOS/218, para. 9. See also SPLOS/203, para. 15.

IV. Matters related to the International Tribunal for the Law of the Sea

A. Report of the Tribunal for 2010

15. The President of the Tribunal, Judge José Luis Jesus, introduced the annual report for 2010 (SPLOS/222) and provided an overview of the work of the Tribunal during the two sessions held in 2010, namely the twenty-ninth and thirtieth sessions.

16. He recalled the demise of former Judge Anatoly Kolodkin (Russian Federation), who had been a member of the Tribunal for 12 years prior to retiring.

17. He drew the attention of the Meeting to the fact that 44 of the 162 parties to the Convention had made a declaration concerning the procedure for the settlement of disputes relating to the interpretation or application of the Convention. He also informed the Meeting that 30 of those 44 parties had selected the Tribunal as a means for the settlement of law of the sea disputes.

18. The President reported on the latest developments in the two cases that had been brought before the Tribunal, namely Case No. 16 *(Dispute concerning delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal) and Case No. 17 (Responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area (request for advisory opinion submitted to the Seabed Disputes Chamber))*. With regard to Case No. 16, the President noted that the final pleading was to be filed by 1 July 2011 and that the oral proceedings would take place in September 2011. A judgment was expected to be delivered in the first quarter of 2012. As for Case No. 17, written and oral proceedings had been held and, in accordance with article 191 of the Convention, the advisory opinion had been rendered on 1 February 2011.

19. The President informed the Meeting of a new case on the Tribunal's docket, Case No. 18, submitted on 23 November 2010, concerning the M/V *Louisa*.

20. He recalled that, pursuant to article 3 of annex VII to the Convention, the President of the Tribunal had the authority to appoint arbitrators at the request of one of the parties to a dispute submitted to arbitration under annex VII whenever the parties did not agree on the choice of arbitrators. He had recently exercised that authority by appointing three arbitrators in the dispute concerning the delimitation of the maritime boundary between Bangladesh and India in the Bay of Bengal, at the request of Bangladesh. The President also noted that, at the request of the Government of Mauritius and in consultation with the parties, he had appointed three arbitrators and the president of the arbitral tribunal established under annex VII of the Convention in respect of the dispute between Mauritius and the United Kingdom of Great Britain and Northern Ireland concerning the "Marine Protected Area" related to the Chagos Archipelago.

21. Furthermore, he recalled that Ireland and France had recently ratified the Agreement on the Privileges and Immunities of the International Tribunal for the Law of the Sea, bringing the number of States parties to that Agreement to 40. He drew attention to the annual call made by the General Assembly in its resolutions, to States that had not yet done so, to consider ratifying or acceding to that Agreement.

22. In relation to the efforts made in 2010 by the Tribunal to disseminate knowledge about the dispute settlement mechanisms established under the Convention, the President of the Tribunal informed the Meeting that the Tribunal had organized a workshop in Fiji with assistance from the Government of Fiji and the Korea International Cooperation Agency (KOICA). Also, government officials from Argentina, Brazil, Greece, Mozambique, Oman, South Africa and Togo had benefited from the capacity-building and training programme on dispute settlement under the Convention that had been established by the Tribunal with the support of the Nippon Foundation. Furthermore, 18 interns from 16 countries had participated in the Tribunal's internship programme. Seven of the interns had benefited from a grant provided by KOICA. Lastly, he recalled that the International Foundation for the Law of the Sea had held its fourth summer academy in 2010 on the theme "Uses and protection of the sea: legal, economic and natural science perspectives".

23. The President of the Tribunal informed the Meeting that the Tribunal had established a voluntary trust fund for training in the law of the sea and maritime fields to assist developing countries in participating in both the internship programme and the summer academy.

24. In the ensuing discussions, several delegations expressed appreciation for the important role of the Tribunal in the settlement of disputes and in the uniform interpretation and application of the Convention. In that regard, several delegations noted that the conclusion of Case No. 17 and the referral of Cases Nos. 16 and 18 marked greater recognition for, and influence of, the Tribunal.

25. Several delegations viewed the delivery of the advisory opinion to the Authority as a landmark in the work of the Tribunal that provided the basis for legal clarity on the question of responsibilities and obligations of State-sponsored activities in the Area. In that connection, it was noted that the advisory opinion would open up greater opportunities for developing States, in particular small island developing States, to participate in activities in the Area. Satisfaction was expressed at the reaffirmation of the precautionary approach contained in the advisory opinion. Some delegations welcomed the decision of the Authority to seek an advisory opinion from the Tribunal. Some other delegations observed that the scope of the advisory opinion needed to be discussed by the Council of the Authority at its upcoming session in July 2011.

26. Several delegations underscored the efficiency of the Tribunal in handling the cases that had been submitted to it.

27. Several delegations expressed their satisfaction with the capacity-building activities carried out by the Tribunal, in particular its recent regional workshop and internship programme, as well as the summer academy.

28. The hope was expressed that all States parties would make a declaration concerning the procedure for the settlement of disputes relating to the interpretation or application of the Convention. Several delegations took note of the increase in the number of States parties to the Agreement on the Privileges and Immunities of the Tribunal and urged other States to accede to the Agreement.

29. Delegations also noted with appreciation the contribution made by the President of the Tribunal, under article 3 of annex VII to the Convention, through the appointment of arbitrators in the cases between Bangladesh and India and between Mauritius and the United Kingdom (see para. 20 above).

30. Addressing the issue of outstanding contributions to the budget of the Tribunal, several delegations appealed to States parties in arrears to make their contributions promptly and in full.

31. Responding to a request for clarifications, the President of the Tribunal noted that, in addition to judicial meetings, the Tribunal held two regular meetings each year which also covered procedural, legal, administrative and financial matters. The President noted that the Tribunal did not issue reports of its internal deliberations, that its deliberations were confidential and that no records were available apart from the report of the Tribunal to the Meeting of States Parties. The President of the Tribunal also referred to article 32 of the Rules of the Tribunal (ITLOS/8), according to which the Registrar of the Tribunal is appointed by the Tribunal from among candidates nominated by the judges. He indicated that a vacancy announcement for the position of Registrar had been issued once, in 2001, further to a decision of the Tribunal. He also specified that the term of office for the position of Registrar, initially seven years, had been changed to five years in 2001.

32. The Meeting took note of the report of the Tribunal for 2010.

B. Financial and budgetary matters

1. Report of the external auditor for the financial period 2009-2010

33. The Registrar introduced the report of the external auditor for the financial period 2009-2010, with financial statements of the Tribunal as at 31 December 2010 (SPLOS/223).

34. According to the auditor, the financial statements and transactions of the Tribunal were in compliance with the Financial Regulations and Rules of the Tribunal, and the accounting principles had been applied by the Tribunal on a basis consistent with that of the preceding financial period. The audit report had been carefully considered by the Tribunal during its twenty-ninth session.

35. The Meeting took note of the report of the external auditor, as contained in document SPLOS/223.

2. Report on budgetary matters for the financial periods 2009-2010 and 2011-2012

36. The Registrar introduced the report of the Tribunal on budgetary matters for the financial periods 2009-2010 and 2011-2012 (SPLOS/224), covering the matters outlined below.

(a) Performance report for 2009-2010

37. The Registrar recalled that the total expenditure for 2009-2010 amounted to €15,829,392, which represented 89.32 per cent of the approved appropriations. The appropriations approved for the 2009-2010 budget included the additional appropriation approved by the Meeting in 2009 to implement the new salary system for the members of the Tribunal. The underperformance was due to the fact that two cases were dealt with by the Tribunal during the financial period 2009-2010, while the budget had made provision for proceedings in four urgent cases. The Registrar also provided details on overexpenditure in the budget section "judges", which was mainly due to the depreciation of the euro in relation to the United States dollar. The

overexpenditure could be financed through transfers within the section, in accordance with the financial regulations of the Tribunal. The overexpenditure of €1,227 in the "representation allowance" section was due to the depreciation of the euro against the United States dollar and it was proposed to the Meeting of States Parties that it be covered by a transfer from the "staff costs" section.

38. Some delegations took note of the savings and overexpenditures reported by the Registrar and emphasized the importance of the optimal use of resources, especially in the current financial situation. Those delegations reaffirmed their support for the principle of zero growth in guiding the work of the Tribunal, combined with the evolutionary approach intended to optimize its efficiency.

39. Some delegations expressed concerns over arrears in the payment of assessed contributions and reiterated their appeal to States parties to honour their commitments and pay outstanding contributions in full and on time. They expressed their appreciation for the action taken by the Registrar in that respect and urged him to continue efforts to collect outstanding contributions.

(b) Report on action taken pursuant to the decision of the twentieth Meeting of States Parties concerning the adjustment of remuneration of the members of the Tribunal

40. The Registrar recalled that, in respect of the adjustment of the remuneration of the members of the Tribunal, the twentieth Meeting of States Parties had taken a decision to set the annual net base salary of the members of the Tribunal at $166,596 effective 1 January 2010. The twentieth Meeting had further decided to adjust the annual base salary of the members of the Tribunal by the same percentage and at the same time as revisions were made to the annual net base salary of the members of the International Court of Justice prior to the twenty-first Meeting of States Parties.

41. The Registrar recalled that the General Assembly, in its resolution 65/248, had approved a salary increase of 1.37 per cent for staff in the Professional and higher categories, as recommended by the International Civil Service Commission, effective 1 January 2011. Pursuant to that resolution, and the adjustment mechanism approved by the General Assembly in its decision 62/547, the annual net base salary of the judges of the International Court of Justice had been revised from $166,596 to $168,878 effective 1 January 2011. In accordance with the decision of the twentieth Meeting of States Parties, the level of remuneration of the members of the Tribunal had been adjusted to $168,878 effective 1 January 2011. The increase did not require any additional appropriations, since the increase of 1.37 per cent in the salary for staff in the Professional and higher categories was offset by a commensurate reduction in post adjustment levels.

42. Recalling the principle of equivalency between the remuneration of the judges of the Tribunal and the members of the International Court of Justice, which had been followed by the Meeting of States Parties since 1996, the Registrar drew the attention of the Meeting to the proposal contained in document SPLOS/224, according to which, in the case of future revisions of the remuneration of the members of the International Court of Justice, the same adjustments should be automatically applied to the judges of the Tribunal.

43. In the ensuing debate, some delegations emphasized the major role played by the Tribunal and observed that the equivalence of remuneration between the judges of the Tribunal and the members of the International Court of Justice had to be

applied mutatis mutandis. Those delegations supported the adoption of the decision on the adjustment mechanism for the remuneration of members of the Tribunal.

44. A doubt was expressed about the proposal to automatically adjust the remuneration of Judges, on the ground that it would undermine the authority of the Meeting of States Parties. It was observed that, while the General Assembly had decided to apply the methodology used by the International Civil Service Commission for United Nations staff members to the members of the International Court of Justice, the Meeting of States Parties had not taken such a formal decision in respect of the judges of the Tribunal, and States parties were not in a position to make informed decisions on the applicability of that methodology to the Tribunal. It was also noted that, according to paragraph 5 of article 18 of the statute of the Tribunal, the remuneration of judges was to be determined "from time to time" by the Meeting of States Parties.

45. Several delegations expressed their support for the proposed decision submitted by the Tribunal and insisted on the need to continue to apply the principle of equivalence of remuneration between the judges of the Tribunal and the members of the International Court of Justice.

46. Some delegations expressed the view that the work of the Meeting could be facilitated by the creation of an advisory body to give advice to the Meeting on matters relating to budget and finance. Conversely, several other delegations were of the view that an additional body or mechanism was not necessary and noted that the creation of such a mechanism could have potential financial implications.

47. An oral amendment to the draft decision contained in annex II to document SPLOS/224 was proposed in order to reflect that the decision was being taken in accordance with the statute of the Tribunal. Following deliberations, the proposed amendment was modified and inserted in the final paragraph of the preamble of the draft decision, stating that the Meeting was acting in accordance with the statute of the Tribunal. The Meeting then adopted the decision on the adjustment mechanism for the remuneration of members of the Tribunal (SPLOS/230).

(c) Matters relating to the financial period 2011-2012

Costs relating to Case No. 16

48. The Registrar reminded the Meeting that the opening date of the oral proceedings in Case No. 16 was 8 September 2011 and that the initial deliberations of the Tribunal would take place shortly before the hearing. In accordance with article 17 of the Rules of the Tribunal, judges whose terms of office expired on 30 September 2011 would continue to sit until the completion of the case. The Registrar further noted that, consistent with the practice followed by the International Court of Justice, judges who were not re-elected and who continued to sit until the completion of a case would receive their annual remuneration until March 2012, while payment of their pensions would be deferred.

49. Furthermore, the Registrar emphasized that, from 1 October 2011 until the completion of the case, the Tribunal would have to pay annual allowance to the judges whose terms of office would have expired and who continued to sit in Case No. 16. He indicated that part of that amount would be financed through the deferment of pension payments to the judges concerned. On the basis of the result of the election, the maximum amount of additional costs would be approximately €35,000.

50. The Registrar proposed that the additional expenditure of €35,000 be covered through savings in other budget lines. For that purpose, it was proposed in document SPLOS/224 that the Meeting authorize the Tribunal to transfer funds from the section "judges " under "case-related costs" to the section "judges " under "recurrent expenditures" to the extent required to cover the difference. In response to a question, the Registrar recalled that in the past the Meeting had authorized similar proposals for the transfer of funds by taking note of the documents in which they had been described.

51. The Registrar then responded to questions concerning several matters, including the number of judges that would continue to be paid until the completion of Case No. 16, details on the calculation of the pension, the proposed allocation of savings, and the function and status of the working capital fund.

Surrender of reserves

52. The Registrar noted that €38,593 had been set aside in a special account to reimburse officials of the Tribunal obliged to pay national taxes in respect of the remuneration paid to them by the Tribunal in 2004 and subsequent years. Since the financial period 2009-2010, there had been no provision in the budgets of the Tribunal for that purpose and therefore the special account would be closed. The Registrar indicated that, in accordance with the relevant provision of the Financial Regulations of the Tribunal, the amount of €38,593 would be surrendered to States parties and deducted from their contributions to the 2012 budget of the Tribunal.

53. The Registrar also recalled that the nineteenth Meeting of States Parties had authorized the Tribunal to use part of the cash surplus from the 2007-2008 budget to finance an additional appropriation (€207,450) to implement the new salary system for the members of the Tribunal for the period July 2009-December 2010 (SPLOS/200). Finally, the Registrar proposed that, since the major part of the additional costs required to implement the new salary system had been financed from savings, the unused balance of €176,704 from the additional appropriation should be surrendered on an anticipatory basis to the States parties in 2011 and deducted from their contributions to the 2012 budget of the Tribunal.

(d) Report on action taken pursuant to the Financial Regulations of the Tribunal

54. The Registrar reported on four items under this heading, namely investment of funds of the Tribunal; the KOICA trust fund; the Nippon Foundation trust fund; and the trust fund for the law of the sea. The Registrar drew attention to the fourth contribution made by the Nippon Foundation, in March 2010, in the amount of €230,000.

55. After having considered it in plenary and also through an informal working group, the Meeting took note of the report of the Tribunal on budgetary matters (SPLOS/224).

56. Germany referred the Meeting to its note concerning its support for the Tribunal (SPLOS/226) and reiterated its continued commitment to provide support to the Tribunal.

C. Election of seven members of the Tribunal

57. On 15 June 2011, the Meeting proceeded with the election of seven members of the Tribunal to fill the seats of those members whose terms of office would expire on 30 September 2011. The elections were held in accordance with article 4, paragraph 4, of the statute of the Tribunal (annex VI to the Convention).

58. The President recalled that the Registrar of the Tribunal, in accordance with the statute, had addressed a note to the States parties to the Convention on 15 December 2010, inviting them to submit from 10 January 2011 to 9 March 2011 the names of candidates for election to the Tribunal.

59. The President referred to documents SPLOS/220 (note by the Registrar of the Tribunal on the election procedures), SPLOS/219 (list of candidates nominated by States parties) and SPLOS/221 (candidates' curricula vitae).

60. Concerning the composition and membership of the Tribunal, the President recalled articles 2 and 3 of the statute, noting in particular that in accordance with article 3(2), there should be no fewer than three members from each geographical group as established by the General Assembly. He also noted that for the purpose of conducting the election of the seven members of the Tribunal at the twenty-first Meeting, the arrangement for the allocation of seats on the Tribunal and the Commission on the Limits of the Continental Shelf (SPLOS/201) would apply.

61. He stated that, consequently, the regional allocation of six seats for the election would be as follows: one member from the African States; one member from the Asian States; one member from the Eastern European States; two members from the Latin American and Caribbean States; and one member from the Western European and other States. The remaining one member of the Tribunal would be elected from among the African, Asian and Western European and other States.

62. The Meeting agreed that the election would follow a two-step approach. In the first part, six members of the Tribunal would be elected on the basis of the confirmed regional allocation of seats. Balloting would continue until the requisite number of candidates from each group had obtained the highest number of votes and the required majority. The first part of the election would have separate ballot papers for each regional group, thus five ballot papers.

63. The second part would be exclusively for the "remaining seat", limiting the election to those candidates from the African, Asian and Western European and other States who had not been elected in the first part. There would be a single ballot paper. Balloting would continue until a single candidate from one of those groups had obtained the highest number of votes and the required majority.

64. Following informal consultations, an understanding had been reached among regional groups that those modalities were without prejudice to any different arrangements for the conduct of future elections by the Meeting of State Parties.

65. Members of the delegations of Bolivia, Greece, Indonesia, Madagascar and Romania acted as tellers.

66. In the first part of the election, Jean-Pierre Cot (France), Zhiguo Gao (China), Elsa Kelly (Argentina), Markiyan Z. Kulyk (Ukraine), Anthony Amos Lucky (Trinidad and Tobago) and Tafsir Malick Ndiaye (Senegal) were elected.[8]

67. In the second part of the election, Joseph Attard (Malta) was elected.[9]

[8] The first part of the election, held on 15 June 2011, required four rounds of balloting. In the first round of balloting, for the African States, out of 149 ballots cast, with 7 invalid ballots and 1 abstention, a majority of 94 votes was required for election. None of the four candidates obtained the required majority. For the Asian States, out of 149 ballots cast, with no invalid ballots and 8 abstentions, a majority of 94 votes was required for election. Having obtained the required majority of votes, Zhiguo Gao (China) (141 votes) was elected. For the Eastern European States, out of 149 ballots cast, with no invalid ballots and 6 abstentions, a majority of 96 votes was required for election. Having obtained the required majority of votes, Markiyan Z. Kulyk (Ukraine) (143 votes) was elected. For the Latin American and Caribbean States, out of 149 ballots cast, with no invalid ballots and 2 abstentions, a majority of 98 votes was required for election. Having obtained the required majority of votes, the following candidates were elected: Elsa Kelly (Argentina) (142 votes) and Anthony Amos Lucky (Trinidad and Tobago) (137 votes). For the Western European and other States, out of 149 ballots cast, with 5 invalid ballots and no abstentions, a majority of 96 votes was required for election. Neither of the two candidates obtained the required majority. Thus, four candidates were elected in the first round.

A second, restricted round of balloting, pursuant to rule 65 of the Rules of Procedure for Meetings of States Parties (SPLOS/2/Rev.4), was held for the African States and for the Western European and other States, being limited to the two candidates from each group that had obtained the highest number of votes in the previous round of balloting. For the African States, out of 149 ballots cast, with 1 invalid ballot and 2 abstentions, a majority of 98 votes was required for election. Neither of the two candidates obtained the required majority. For the Western European and other States, out of 149 ballots cast, with 3 invalid ballots and no abstentions, a majority of 98 votes was required for election. Neither of the two candidates obtained the required majority.

Pursuant to rule 65, a third, restricted round of balloting was held for the African and Western European and other States. The representative of Ghana made a statement withdrawing the name of the candidate from Ghana from the first part of the election on the understanding that the candidate would be included among the non-elected candidates for the second part of the election. For the African States, out of 149 ballots cast, with no invalid ballot and 10 abstentions, a majority of 93 votes was required for election. Having obtained the required majority of votes, Tafsir Malick Ndiaye (Senegal) (139 votes) was elected. For the Western European and other States, out of 149 ballots cast, with 1 invalid ballot and 1 abstention, a majority of 98 votes was required for election. Neither of the two candidates obtained the required majority.

A fourth, restricted round of balloting was held for the Western European and other States. The representative of Malta made a statement withdrawing the name of the candidate from Malta from the first part of the election on the understanding that the candidate would be included among the non-elected candidates for the second part of the election. Out of 148 ballots cast, with no invalid ballots and 6 abstentions, a majority of 95 votes was required for election. Having obtained the required majority of votes, Jean-Pierre Cot (France) (142 votes) was elected.

[9] The second part of the election, held on 16 June 2011, required two rounds of balloting. It was limited to those candidates from the Asian, African and Western European and other States who had not been elected in the first part of the election. The representative of Benin made a statement withdrawing the candidate from Benin.

In the first round of balloting, out of 149 ballots cast, with no invalid ballots and 1 abstention, a majority of 99 votes was required for election. None of the three candidates obtained the required majority.

Pursuant to rule 65 of the Rules of Procedure for Meetings of States Parties (SPLOS/2/Rev.4), a second, restricted round of balloting was held, being limited to the two candidates who had obtained the highest number of votes in the previous round of balloting. Out of 149 ballots cast, with no invalid ballot and 1 abstention, a majority of 99 votes was required for election. Having obtained the required majority of votes, David Joseph Attard (Malta) (99 votes) was elected.

68. After the completion of the voting process, the President announced the election of the seven judges of the Tribunal for a nine-year term of office commencing on 1 October 2011. On behalf of the Meeting, the President congratulated the new judges on their election.

V. Information on the activities of the International Seabed Authority

69. The Secretary-General of the Authority, Nii Allotey Odunton, provided information on the activities carried out by the Authority during the past 12 months, noting that the seventeenth session of the Authority had not yet taken place.

70. Recalling the advisory opinion of the Seabed Disputes Chamber,[10] he noted that it had been requested by a decision of the Council (see ISBA/16/C/13) in response to a proposal originally submitted by the delegation of Nauru. He expressed the view that the advisory opinion provided important clarifications on some of the more complex provisions of the Convention and the Agreement relating to the implementation of Part XI of the Convention. The reaction to the advisory opinion on the part of the Authority, the seabed mining industry and academia had been positive, a circumstance that suggested the growing confidence of the commercial sector in the legal regime for the development of resources of the Area.

71. Apart from the election of members of the Legal and Technical Commission, the most important substantive issue for the forthcoming session would be the consideration of four pending applications for exploration contracts in the Area. For the first time, two of the applications were from private sector entities sponsored by developing States. The other two were the first ones concerning the exploration of polymetallic sulphides.

72. The Secretary-General of the Authority informed the Meeting that the Authority was under increasing pressure with regard to the delivery of environmental protection for the Area. The Authority was considering a regional-scale environmental management plan for the Clarion-Clipperton Fracture Zone and also a proposal for the management of chemosynthetic environments. Environmental protection plans for the Area required a better understanding of the deep sea marine environment and improved standardization of data, particularly related to taxonomy.

73. The Secretary-General of the Authority concluded his remarks by noting with concern that 21 members of the Authority that had become parties to the Convention prior to the entry into force of the Agreement relating to the implementation of Part XI of the Convention had not yet become parties to the Agreement. He also reported that, as at 31 May 2011, 58.6 per cent of contributions to the 2011 budget had been received by the Authority and 43 members had been in arrears with their contributions for a period of two or more years.

74. In the ensuing debate, delegations noted with anticipation the forthcoming approval of the regulations on prospecting and exploitation of cobalt-rich ferromanganese crusts. Those regulations would complement the regulatory framework provided by the Mining Code, which includes all rules, regulations and procedures issued by the Authority to regulate prospecting, exploration and

[10] See paras. 18 and 25 above.

exploitation of marine minerals in the Area. It was noted that such a regime should be in accordance with the Convention and should guarantee security of tenure for exploitation and exploration while ensuring adequate protection of the marine environment. It was stated that, with the adoption of the regulations regarding cobalt-rich ferromanganese crusts, all three significant categories of mineral deposits in the Area would be covered and the Authority should conduct a limited preliminary study on the exploitation of those resources.

75. Some delegations noted the work of the Authority, particularly with respect to the protection of the marine environment. In that connection, the formulation of the draft environmental management plan for the Clarion-Clipperton Fracture Zone was noted with appreciation.

76. A view was expressed that the role of the Authority was not restricted to mineral resources but should cover all resources, including marine genetic resources of the Area.

77. It was observed that a better understanding of the deep ocean environment could be achieved by the collection and consolidation of scientific information in databases.

78. Attention was drawn to the provisions contained in article 82, paragraph 4, of the Convention and their implementation in due course. In response to a question in that connection, the Secretary-General of the Authority noted that as exploitation or mining of the resources of the Area had not commenced, the sharing of benefits could not as yet take place.

79. A proposal was made to establish a global organization for the protection of the seabed to be funded through the budget of the Authority. It was noted that decision X/29 of the Conference of the Parties to the Convention on Biological Diversity, in particular its paragraph 20, could form a basis to assist more scientists from developing States.

80. The low level of participation by States at the sessions of the Authority was noted with concern by some delegations.

81. Appreciation was expressed for the work of the Authority in capacity-building, including through workshops, seminars and the holding of meetings. A project to integrate and consolidate all information on the geology and mineral resources of the equatorial and South Atlantic oceans was recalled. The project envisaged South-South capacity-building and marine scientific research. The Secretary-General of the Authority expanded on the project, noting in particular that the integration and consolidation of data in geographic information systems and the promulgation of data standards used by Brazil to assist other States in the region would help to ensure that data and information collected in the Area formed the basis for further exploration. He noted that the project also included hands-on experience for marine scientists working aboard vessels with scientific equipment.

82. The Meeting took note of the information reported by the Secretary-General of the Authority.

VI. Matters related to the Commission on the Limits of the Continental Shelf

A. Information reported by the Chairperson of the Commission

83. The Acting Chairperson of the Commission, Harald Brekke, made a statement providing information on the activities carried out by the Commission since the twentieth Meeting of States Parties.[11] The statement was based on his letter of 21 April 2011 addressed to the President of the twenty-first Meeting of States Parties (SPLOS/225 and Corr.1).

84. Several delegations expressed their condolences for the untimely demise of Mr. Kensaku Tamaki (Japan), former member of the Commission, highlighting his contribution to the work of the Commission.

85. The importance of the work of the Commission to coastal States and the international community as a whole was highlighted. Delegations emphasized, in particular, the role played by the Commission in contributing to the establishment of the outer limits of the continental shelf of coastal States, with the consequent delineation of the extent of the Area. Thus, by carrying out its functions, the Commission, in the view of delegations, facilitated the realization of the common heritage of mankind and sustainable development.

86. Indonesia informed the Meeting of its intention to make other partial submissions to the Commission. The Meeting was also informed of upcoming contributions to the voluntary trust fund for the purpose of defraying the cost of participation of the members of the Commission from developing States in the meetings of the Commission and to the trust fund for the purpose of facilitating the preparation of submissions to the Commission.

87. A number of delegations addressed the issue of the interpretation of article 121 of the Convention. Some delegations noted, in particular, that although the majority of submissions made to the Commission were in conformity with the provisions of the Convention, in certain submissions features not supporting human habitation or economic life of their own had been used to generate an extended continental shelf. In that connection, a view was expressed that the use of rocks to delineate the continental shelf of a coastal State was not compatible with the Convention. It was also pointed out that, if any recommendations of the Commission should be the basis for establishing a continental shelf relating to a rock that did not sustain human habitation or economic life of its own, it would set a negative precedent and would directly affect the Area. It was recalled that the Commission, at its twenty-third session, had stated that it had no role in matters relating to the legal interpretation of article 121 of the Convention (see CLCS/62, para. 59). In that connection, it was observed that the Commission should not take action on the issue until the divergence of views had been resolved.

88. Some delegations referred to the mechanisms of dispute settlement available to States parties under the Convention which could facilitate the resolution of divergent views, such as on whether a geological formation constituted a rock or an island. The question was also raised whether the Commission had the ability to refer

[11] For more information on the work of the Commission during its twenty-sixth and twenty-seventh sessions, see CLCS/68 and CLCS/70.

the matter to the Tribunal for an advisory opinion and, if not, whether it should be given that ability.

89. Conversely, the view was expressed that the mandate of the Commission to consider submissions and make recommendations was well established by the Convention. Moreover, the circumstances in which it should not consider submissions were addressed in the Rules of Procedure of the Commission. Thus, States parties should respect the mandate of the Commission.

90. The view was also expressed that annex I to the Rules of Procedure of the Commission (CLCS/40/Rev.1) applied not only in case of overlapping claims, but also in cases of unresolved land or maritime disputes related to a submission.

91. A suggestion was made that the Commission should enumerate the issues of a legal nature that it faced in the consideration of submissions and present them to the Meeting of States Parties.

92. The Meeting took note with appreciation of the information reported by the Acting Chairperson of the Commission.

B. Workload of the Commission

93. The Acting Chairperson of the Commission also made a PowerPoint presentation to the Meeting highlighting the work that the Commission had already completed and the status of the work before it. In particular, scenarios under which the Commission could work for longer periods and the implications thereof were described.

94. A view was expressed that, because one of the illustrative maps included in the presentation represented maritime spaces in a manner inconsistent with the domestic legislation of a certain State and international law, the presentation should not be circulated.

95. The Coordinator of the informal working group of the bureau of the Meeting of States Parties on the workload of the Commission, Eden Charles, reported on the work of the informal working group.

96. The Meeting established an open-ended working group to allow for further consultations on the matter in order to finalize a draft decision on the workload of the Commission for consideration by the Meeting.

97. While satisfaction was expressed with the work of the informal working group and the measures adopted by the Commission to address its workload, including its methods of work, the current workload of the Commission and the pace of consideration of submissions remained a source of concern to many delegations. In particular, some delegations underscored the challenges that arose in terms of loss of institutional memory and storage of submission data as a result of the delay in the consideration of submissions, which were taken up in the order of the queue. The urgency of adopting measures to address the workload of the Commission was thus highlighted.

98. The view was expressed that the issue of the workload of the Commission was a legal problem, not a financial one. It was noted that the Convention did not limit the obligations of the Secretariat with regard to its servicing the Commission, nor

did it limit the obligations of the Commission to consider all submissions made by establishing a pre-determined number of meetings per year or any other type of limits. Attention was drawn to the possibility of resolving the matter in accordance with the means provided by the Convention.

99. Some delegations called for making use of all available means to allow the Commission to fulfil its work. However, the view was expressed that, in considering possible solutions, the feasibility and efficiency of existing options should be examined, and priority given to practical measures that would avoid duplication of efforts and ensure an optimal use of the existing framework.

100. Some delegations expressed the view that the most realistic option to address the workload of the Commission was to increase the frequency and duration of Commission meetings. In that connection, a number of delegations supported the option of full-time work of the Commission at United Nations Headquarters. A proposal was also made that full-time work be considered for an initial given period until the workload of the Commission had been reduced. It was also proposed that should full-time work not be possible, at least six months of work per year should be implemented immediately. Preference was also expressed for 21 to 26 weeks of work per year divided into three sessions. While some delegations noted that the Convention and the Rules of Procedure might need to be amended, others stressed the need to respect the integrity of the Convention.

101. It was noted that an increase in the working time in New York would place an additional burden on the members of the Commission, nominating States and the Secretariat. Several delegations stated that an extension of the work of the Commission in New York should be sustainable for nominating States and could be accommodated within existing resources. Other delegations drew attention to the difficulty of having the Commission meet for longer periods and more frequently without additional resources. The need to enhance Secretariat support to the Commission was also stressed.

102. It was noted that without financial support none of the scenarios currently considered could be implemented; it was thus proposed that the informal working group explore funding strategies, including funding from the United Nations regular budget. Some delegations stated that an increased frequency of Commission meetings should not negatively affect the participation of members from developing countries in the work of the Commission.

103. The need to ensure geographical balance and the participation of members from developing countries in the work of the Commission was highlighted. In that regard, the need was stressed to establish a mechanism to help nominating developing countries defray the costs of their nationals' full-time basis participation in the work of the Commission.

104. The possibility of using the trust fund and using bilateral assistance was also underscored.

105. It suggested that the possible expenditures involved and means of covering them be further considered. In that regard, the importance of maintaining the independence of the Commission and of avoiding the provision of resources through ad hoc means was underscored. Some delegations stressed that the decision of the Meeting of States Parties should not attempt to preclude the possibility of the

General Assembly considering, through the Fifth Committee, how to allocate the necessary resources to the Secretariat.

106. It was stressed that medical coverage for Commission members should also be addressed.

107. A call was made to settle the new working conditions of the Commission before the election of new members in 2012.

108. The Meeting continued its discussions on this item in an open-ended working group of the whole coordinated by Eden Charles, with the participation of the Acting Chairman of the Commission. On the basis of the draft prepared by the open-ended working group, the Meeting adopted, by consensus, a decision on the workload of the Commission on the Limits of the Continental Shelf (SPLOS/229).

VII. Report of the Secretary-General under article 319 of the United Nations Convention on the Law of the Sea

109. The Meeting considered the annual reports of the Secretary-General on oceans and the law of the sea (A/65/69/Add.2, A/66/70 and A/66/70/Add.1). Delegations expressed their appreciation to the Secretary-General and to the Division for Ocean Affairs and the Law of the Sea of the Secretariat for the useful and comprehensive reports.

110. It was observed that the publication of the annual report of the Secretary-General was timed to enable the General Assembly to deliberate on the agenda item concerning oceans and the law of the sea. Therefore, by the time the report was considered by the Meeting of States Parties, the information it contained was no longer up to date. Commenting on paragraph 26 of document A/65/69/Add.2, regarding the deposit, pursuant to article 16(2) of the Convention, of lists of geographical coordinates of points defining the baselines of Saudi Arabia "in the Red Sea, the Gulf of Aqaba and the Arabian Gulf", an observer from the Islamic Republic of Iran recalled that, by a note verbale dated 22 December 2010, his Government had rejected any denomination other than "Persian Gulf" as void of any legal significance.

111. Some delegations emphasized that the Convention provided the legal framework for all activities in the oceans and seas, as recognized by other important instruments like Agenda 21,[12] and was central to the pursuit of sustainable development. Other delegations drew attention to the fact that 2012 would mark the thirtieth anniversary of the adoption of the Convention. In that connection, it was announced that a meeting of the Non-Aligned Movement would be held to commemorate the occasion. Several delegations welcomed the new States parties, Malawi and Thailand, which brought the Convention closer to the goal of universality.

112. The importance of capacity-building was reiterated and attention was drawn to the provisions of Part XIV of the Convention on development and transfer of marine technology. In that connection, concern was expressed with regard to the lack of a

[12] *Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992*, vol. I, *Resolutions Adopted by the Conference* (United Nations publication, Sales No. E.93.I.8 and corrigendum), resolution 1, annex II.

comprehensive global assessment of the capacity-building needs of States in relation to ocean affairs and the law of the sea.

113. The hope was expressed for rapid development of a legal regime for marine genetic resources in areas beyond national jurisdiction.

114. Some delegations called for strict and good-faith adherence to the principles contained in the Convention on maritime zones concerning the respect for the sovereignty and sovereign rights of States, the prohibition of the use of force or threat to use force and the peaceful settlement of disputes. Several delegations expressed concern with regard to certain incidents that were seen as violations of the Convention and represented a threat to peace and security in the South China Sea. Other delegations called upon the concerned parties to exercise restraint and settle any disputes by peaceful means under international law and the Convention. In that connection, several delegations recalled the importance of the Declaration on the Conduct of Parties in the South China Sea, concluded between the Association of South-East Asian Nations (ASEAN) and China in 2002, which had been reaffirmed at the ASEAN summit held in Jakarta in May 2011. Speedy adoption of a code of conduct in the South China Sea was called for.

115. The view was expressed that all maritime claims, including those that might relate to banks and reefs that were completely submerged all the time, should be made in accordance with the provisions of the Convention, bearing in mind particularly article 76. In that connection, attempts at appropriation of such features in the waters of certain States were condemned.

116. Some delegations noted with concern that incidents of piracy and armed robbery at sea had increased, and that with regard to incidents off the coast of Somalia, the geographical range of attacks had spread and often involved the use of automatic weapons. It was recalled that, by affecting shipping, navigation, fishing and tourism, piracy had a negative impact on the economic and security situation in the region. The need to encourage capacity-building in the area to fight such crimes was highlighted. In that connection, the work of the United Nations Office on Drugs and Crime was noted with appreciation and the need to bolster legal systems was underscored. The contribution of the Seaman's Church Institute and its role in supplying information on the treatment and welfare of seafarers was also noted with appreciation.

117. Concern was expressed by one delegation about the lack of information in the most recent report of the Secretary-General regarding the rescue of persons in distress at sea, which had been covered in other reports of the Secretary-General, including A/61/63, A/63/64 and A/64/66. The reluctance of some States to allow disembarkation in those situations was noted as a possibly life-threatening act. An appeal was made for the promotion of capacity-building to ensure that States maintain efficient search and rescue services pursuant to article 98 of the Convention.

118. Australia informed the meeting of its forthcoming contribution to the Assistance Fund under Part VII of the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks.

119. Divergent views were expressed concerning the mandate of the Meeting of States Parties to discuss matters of a substantive nature relating to the implementation of the Convention. Several delegations pointed out that the global

forum with the mandate to undertake an annual substantive review and evaluation of the implementation of the Convention and other developments relating to ocean affairs and the law of the sea was the General Assembly. In their view, the Meeting of States Parties should limit itself to the consideration of financial and administrative matters relating to the Tribunal, the Authority and the Commission. In that connection, it was recalled that the Third United Nations Conference on the Law of the Sea had rejected proposals for a broader role for the Meeting, and that that was reflected in the qualified title of item 14 of the Meeting's agenda.

120. Other delegations expressed the opposite view, noting that the Meeting of States Parties constituted the natural forum for discussion of all issues pertaining to the implementation of the Convention. They recalled that in the past, the Meeting had adopted substantive decisions related to the implementation of the Convention, such as those contained in documents SPLOS/72, SPLOS/183 and SPLOS/201. It was also observed that the exchange of views and debates on various matters of a general nature that took place in the Meeting facilitated the implementation of the Convention and relations among States.

121. The Meeting took note of the report of the Secretary-General under article 319. The same agenda item would be included in the provisional agenda of the twenty-second Meeting.

VIII. Other matters

Ship and Ocean Foundation

122. The Ship and Ocean Foundation, a non-governmental organization recognized by the Economic and Social Council, had made a request to attend the Meeting of States Parties as an observer. In light of rule 18 of the Rules of Procedure, the Meeting of States Parties approved the request.

123. The representative of the Foundation recalled that it operated under the name of Ocean Policy Research Foundation, and brought to the attention of the Meeting the broad range of activities undertaken by his organization in the field of ocean affairs through interdisciplinary research, education, information and policy-forming programmes.

Seamen's Church Institute

124. The representative of the Seamen's Church Institute drew the attention of the Meeting to the continued incidents of piracy, particularly in the Gulf of Aden and off the coast of Somalia. He recalled that, despite the considerable efforts of the international community to prevent, detect and suppress the problem, the effects of piracy on seafarers had worsened in the past year.

Information provided by the Secretariat

125. The Secretariat provided information on the voluntary trust funds and the fellowships administered by the Division and the status of their balances as at the end of May 2011. Delegations expressed appreciation to the States that had contributed or pledged to contribute to the trust funds. In conclusion, the President of the Meeting of States Parties thanked delegations and the Secretariat for their valuable cooperation and support.